

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SURFACE ART, INC.,

Plaintiff,

v.

TESSERAE TECHNOLOGIES, LLC, et  
al.,

Defendants.

CASE NO. 2:24-cv-00924-TL

ORDER ON FIRST MOTION TO  
DISMISS

This matter is before the Court on Defendants Tesserae Technologies, LLC, and David Drishpon's Motion to Dismiss Plaintiff's original Complaint. Dkt. No. 18 (Motion to Dismiss); *see* Dkt. No. 1 (original Complaint). For the reasons stated below, the Court DENIES AS MOOT Defendants' motion.

**I. BACKGROUND**

On June 26, 2024, Plaintiff Surface Art, Inc. initiated this case by filing a complaint against Defendants Tesserae Technologies, LLC; David Drishpon; Erpizo, LLC; and Does 1–50. Dkt. No. 1 at 1. On September 6, 2024, Defendants Tesserae and Drishpon moved to dismiss the

complaint. Dkt. No. 18. On September 26, 2024, Plaintiff filed a First Amended Complaint (“FAC”), adding Mark Spears as a defendant, as well as two new causes of action. Dkt. No. 21. On September 27, 2024, Plaintiff erroneously re-filed the FAC in duplicate. Dkt. No. 23. Five days later, on October 2, 2024, Plaintiff caught the error and submitted an “errata,” noting that the duplicate FAC had been “inadvertently filed due to a clerical error.” Dkt. No. 24 at 2. Plaintiff requested that the duplicate FAC be stricken. *Id.* On October 10, 2024, Defendants Tesserae and Drishpon re-filed their Motion to Dismiss, which is presently pending before the Court. Dkt. No. 27.

## II. DISCUSSION

### A. Original Complaint and Original Motion to Dismiss

Federal Rule of Civil Procedure 15(a)(1)(B) allows a plaintiff to amend a complaint once as a matter of course “no later than . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Here, Plaintiff filed its FAC 20 days after Defendants Tesserae and Drishpon filed their motion to dismiss under Rule 12(b). *Compare* Dkt. No. 18, *with* Dkt. No. 21. Therefore, Plaintiff could file its FAC as a matter of course, thus superseding and rendering inoperative its original complaint (Dkt. No. 1). *See Valadez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011) (“[A]n amended complaint supersedes the original, the latter being treated thereafter as non-existent.”). In light of the FAC, Defendants Tesserae and Drishpon’s Motion to Dismiss the inoperative original complaint (Dkt. No. 18) is thus moot, and the Court therefore DENIES it on that basis. *See ChinaCast Educ. Corp. v. Chen Zhou Guo*, No. C15-5475, 2015 WL 13657741, at \*1 (C.D. Cal. Nov. 12, 2015) (denying as moot motion to dismiss superseded complaint).

**B. First Amended Complaint and Second Motion to Dismiss**

The FAC (Dkt. No. 21) is the operative complaint in this matter. *See Valadez-Lopez*, 656 F.3d at 857. Accordingly, Defendants Tesserae and Drishpon’s Motion to Dismiss the FAC (Dkt. No. 27) is pending before the Court. Plaintiff submitted its response on October 31, 2024 (Dkt. No. 28), and Defendants Tesserae and Drishpon filed their reply on November 7, 2024 (Dkt. No. 32). Therefore, the matter is fully briefed.<sup>1</sup>

**C. Duplicate FAC and Errata**


Plaintiff asserts that the amended complaint filed at Docket No. 23 is “wholly duplicative” of the FAC filed at Docket No. 21 and requests that it be disregarded and stricken from the docket. Dkt. No. 24 at 2. Having compared the documents with one another, the Court agrees and STRIKES the duplicate FAC from the docket.

**III. CONCLUSION**

Therefore, the Court orders:

- (1) Defendants Tesserae and Drishpon’s Motion to Dismiss (Dkt. No. 18) is DENIED as moot.
- (2) Plaintiff’s duplicate First Amended Complaint (Dkt. No. 23) is STRICKEN.

Dated this 17th day of December 2024.

  
Tana Lin  
United States District Judge

<sup>1</sup> Defendant Erpizo LLC, which did not join the Motion to Dismiss, answered the FAC on November 7, 2024. Dkt. No. 30. Likewise, Defendant Spears, who also did not join the Motion to Dismiss, answered the FAC on November 20, 2024. Dkt. No. 33.